

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY JUDGES' ORIGINAL ORDER NO. 386 OF 2006
IN NO.2048 OF 1996
SUIT

Ramesh Jain & ors Plaintiffs

vs

Vijay Sampat & ors Defendants

Mr.Ramesh Jain with Ms Kusum Jain for Plaintiffs
Ms Manjiri Shah for Defendant nos.1,3,4,6,7,10 & 11

CORAM : SMT R.S.DALVI, J

DATED : 10th January, 2007

P.C.

1. The defendant nos. 1,3,4,6,7,10 and 11 have sought this Judge's order for permission to bid at the auction to be conducted by the Sheriff of Bombay upon the warrant of sale dated 29th July, 2005 in respect of the premises at 210/211, Amir Industrial Estate, Sun Mill Compound, Lower Parel, Mumbai and for adjustment of the decretal amount of Rs.90,11,930.37 being the principal and interest at 24 % p.a. thereon to mark the decree satisfied to that extent and if the amount of the bid is higher than the amount due to the defendant, the defendant no. 1 be directed to pay over the difference.

2. The defendants have applied for the aforesaid reliefs because otherwise they, as the party defendants would not be entitled to bid at the auction. They have been allowed to bid. Their bid has been directed to be modified to a small extent by increasing the bid. No other party has bid at the auction. The adjustment is sought as the bid amount is near about the consent decree in favour of the defendants. The consent decree was passed on 6th March 1997 in terms of the consent terms signed by the parties. Under the consent terms, shares of defendant no. 9 were agreed to be sold to the plaintiff for the consideration mentioned in consent terms. The consideration was payable by the plaintiff to the aforesaid defendants. The share certificates were handed over to the plaintiff, but the consideration has not been paid. The aforesaid gala which stands exclusively in the name of the plaintiff no. 3 was agreed to be handed over to the receiver with power to take vacant possession thereof after 31st December, 1997 and to sell the same. Since the amount has remained unpaid, the defendants have sought to execute the consent decree.

3. In execution of the consent decree, the aforesaid gala was to be sold. For sale of the

gala, the defendants have bid. They therefore, claim sale of the gala together with apportionment/adjustment of the decretal amount.

4. The decretal amount has been worked out as per Exhibit A-1 to the affidavit in support of the Judge's order. Interest is claimed at the agreed rate mentioned in clause 4 and 7 of the consent terms.

5. The warrant of sale of immovable property is dated 29th July, 2005. The defendants have given notice of their claim on the aforesaid property on 12th September, 2005 in Execution Application No.59 of 1999 calling upon the claimants to file objections on or before 14th November, 2006. The defendants have also given public notices in Free Press Journal and Navshakti on 13th September, 2005. The defendant's advocate has given notice dated 23rd January, 2006 to the plaintiffs in Execution Application No.55 of 1999 to appear before the Commissioner for Taking A/cs on 31st January, 2006. The notice of proclamation for sale has been issued by the Commissioner for Taking A/cs on 13th March 2006 calling upon the parties to attend his office for settling the draft proclamation for sale on 31st March, 2006. The

notices have been sent to the plaintiff no. 1 by registered post on 12th March 2006 and to the plaintiff no. 3 on 29th March 2006. Yet, none appeared for settling the draft proclamation for sale before the Commissioner for Taking A/cs. The proclamation of sale was settled by the Commissioner for Taking A/cs on 3rd April, 2006. Thereafter, also notices have been sent to the plaintiff and the defendant no. 9 by registered post A.D. in newspaper through the Sheriff's office on 30th June, 2006 to remain present for settling the terms of the proclamation of sale on 28th July, 2006. Even there, the plaintiff never appeared.

6. The defendants have been permitted to bid at the auction subject to confirmation by the Court on 8th November, 2006. The property has been put up for sale by auction on 9th November, 2006. Intimation of this Judge's order dated 10th November, 2006 came to be given to the plaintiff no. 3, whose property is required to be sold as per the auction on 13th November, 2006, that the matter will appear in this court on 15th November, 2006. Thereafter, the matter has been adjourned to 5th December, 2006 and then to 11th December, 2006.

In the meantime, the defendants have raised their offer as per the direction of the Court.

7. The plaintiffs object to the confirmation of the sale by passing of the Judge's order or otherwise on several grounds.

8. They have disputed the decretal amount as shown in Exhibit A-1. They have not stated what according to them, is the correct decretal amount. That amount can be computed by the registry of this Court/Office of the Prothonotary and Senior Master.

9. The plaintiff's claim that under the consent terms only gala No. 210 has been agreed to be sold and not gala no.211. That contention is mischievous. Gala nos. 210 and 211 are adjacent. They are not partitioned. They have one entry. They both stand in the name of plaintiff no.3 since as far as back on 31st August, 2004. Before the warrant of sale came to be taken out, the defendants applied for and obtained a clarification of the consent terms that the gala mentioned in clause 7 of the consent terms included gala nos. 210 and 211 as they were treated as one gala. Consequently, the objection of the plaintiff to

that effect does not survive.

10. It is contended on behalf of the plaintiff that the amount obtained on the auction is far less than the market price and that the market price has considerably risen thereafter. The plaintiff has not shown what is the correct market price. The amount has been ascertained only as late as November, 2006. This Judge's order has been taken out itself in November, 2006 immediately when the property was put up for auction. No appreciable increase in the market price has thereafter taken place. The auction sale held otherwise properly and in accordance with law and cannot be vitiated within a couple of months on the ground of market increase in prices of the properties.

11. It is also contended that the exact area of the premises has not been worked out and hence the computation per square feet of the area is incorrect. It is not known how the plaintiffs can conclude that exact area is not worked out. The valuation report has been shown to the Court. The exact area of the ground floor premises as also the mezzanine floor premises is separately and meticulously worked out. That contention also cannot survive. The area of the premises orally

stated by the plaintiff cannot be accepted in view
of the copious measurements taken by the valuer.

12. It is contended that another decree holder IDBI has also obtained a decree against the plaintiffs and sale of the premises must be proportionately disbursed to both the creditors. It is contended that whereas claim of the defendant is approximately to the extent of Rs.1 crore, the claim of IDBI is to the extent of Rs.5 crores and hence 80 % of the auction amount is required to be disbursed to IDBI. IDBI who have been separately represented, have obtained a recovery certificate under section 19 (22) of The Recovery of Dues due to banks and Financial Institutions (Amendment) Act 2000 on 18th October, 2002. They sought to withdraw the Chamber Summons taken out by them for pursuing that claim under the recovery certificate on 18th January, 2005 to proceed under the aforesaid Act. They have since not taken out any proceedings under sections 25 and 28 of the said Act which they are enjoined to do. In the absence of any execution proceedings taken out by them as per the specific procedure laid down by law applicable to them they are not entitled to obtain any part of the auction amount which has in the meantime taken place. It is seen that each of the

aforesaid objection are frivolous. The consent terms have not been honoured and must be executed. The execution has been by a private auction of property agreed to be earmarked for such a execution. The defendant nos. 1,3,4,6,7,10 and 11 have already been allowed to bid subject to confirmation of this court. Their bid has been made as per the required procedure. The valuation is seen to be adequate and proper. The confirmation of sale to the defendants under the aforesaid auction is therefore, required to be made.

13. Hence, the following order :

The auction sale in favour of the defendant nos. 1,3,4,6,7,10,11 is confirmed. These defendants shall be entitled to adjust the amount of their bid to the decretal amount shown in Exhibit A to the affidavit in support of the Judge order. These defendants shall pay the balance amount, if any, payable to the Sheriff of Mumbai.

These defendants shall also pay the requisite amount of stamp duty along with the bid amount within 2 weeks from today.

This order is stayed for 3 weeks.

(Smt R.S.Dalvi,J)